PACIFIC RIM
ADVISORY COUNCIL

Pacific Rim Advisory Council
July 2017 e-Bulletin

MEMBER NEWS

►ARIAS Appoints Four to Partner
►BENNETT JONES Appoints Vice Chair , Strategy & Innovation
►BRIGARD & URRUTIA Opens Office in Cali
►CAREY ADDS Economist Valuation Expert
►HOGAN LOVELLS launches Financial Services Regulatory Consulting Practice

COUNTRY ALERTS

►ALGERIA Changes to Renewable Energy Sector GIDE

►AUSTRALIA Government Tables Comprehensive Telecommunications Reform Package CLAYTON UTZ

►BENELUX Introduction of UBO Registers Running Late NAUTADUTILH

►BRAZIL Major Decision on Confirmation of Foreign Arbitral Awards TOZZINIFREIRE

►CANADA New Federal Volatile Organic Compounds Reduction Regulations for the Petroleum Sector BENNETT JONES

►CHILE Central Bank Issues New Payment Cards Regulations CAREY

►CHINA China's draft data Localisation measures open for comment HOGAN LOVELLS

►COSTA RICA Regulatory Requirement on Transfer-Pricing Delayed ARIAS

►INDONESIA Regulation on Financial Technology Based Lending Services ABNR

►MALAYSIA The Seafarer's Bill of Rights SKRINE

►NEW ZEALAND Government Introduces Block Exemption To Cartel Bill for Specific International Liner Shipping Activities SIMPSON GRIERSON

►PHILIPPINES New Procedure for Claiming Tax Treaty Benefits for Dividend Interest and Royalty Income SyCipLaw

►TAIWAN Three-tier Progressive Tax Structure is Introduced to Replace the Fixed Estate and Gift Tax Rate LEE & LI

►UNITED STATES EPA Finalizes TSCA Framework Rules BAKER BOTTS

►UNITED STATES Emergency Information Accessibility Rules for Second-Screen Devices – Compliance Deadline DAVIS WRIGHT TREMAINE

►UNITED STATES Changing Cybersecurity Threats in the Context of the Internet of Things: Don't Blink or You'll Miss It HOGAN LOVELLS

►VENEZUELA New Fees for Intellectual Property Rights HOET PELAEZ CASTILLO & DUQUE

CONFERENCES & EVENTS

Upcoming Conferences

PRAC 62nd International Conference
Sao Paulo - Hosted by TozziniFreire - October 21 - 24, 2017
Registration Now Open

PRAC 63rd International Conference
Honolulu - Hosted by Goodsill Anderson Quinn & Stifel LLP
April 21—24, 2018

For more information visit www.prac.org

MEMBER DEALS MAKING NEWS

►BAKER BOTTS Represents Westar Energy, Inc. in Revised Transaction for $14 Billion Merger of Equals with Great Plains Energy Incorporated

►BENNETT JONES Vector Capital completes C$293 million acquisition of Halogen Software Inc.

►BRIGARD URRUTIA and Clayton Utz Act for L Catterton in Maaji Combination

►CAREY Assists in Chilean Solar Plant Project Financing

►CLAYTON UTZ Acts for GFG Alliance in Successful Bid to Acquire Arrium

►DAVIS WRIGHT TREMAINE World-Leading Ultrasound Technology Client Verasonics Wins Five-Year Injunction and Damages, Fees, and Costs in Arbitration Over Trade Secret Theft

►GIDE Advises Renault on its Joint Venture with Chinese automaker Brilliance

►HOGAN LOVELLS Achieves Precedent-Setting Product Liability Victory on behalf of Bristol-Myers Squibb in U.S. Supreme Court

►NAUTADUTILH Assisted Van Lanschot Kempen with Acquisition of UBS's Domestic Wealth Management Activities

►RCD Advises Finotic on a Financing Round of €25 million

►Muñiz Advises Engie on Bond Issue

►TozziniFreire Advises Underwriters in Brazilian Ethanol and Sugar Company Raizen Energia Debt Tap

PRAC TOOLS TO USE

PRAC Contacts PRAC Member Directory Events
Visit us online at www.prac.org

ARIAS APPOINTS FOUR TO PARTNER

EL SALVADOR – 05 July, 2017: Arias is pleased to announce the appointment of 4 new Partners to our El Salvador office, reaching a total of 36 Partners in the Firm.

Luisa Rivas, Carolina Lazo, Luz Bustamante and **Jaime Rodríguez** have been promoted to Partners in recognition of their capacity, experience, effort and dedication to the Firm and our clients.

Luisa Rivas has focused her practice in corporate, commercial, financial and energy law, advising national and international companies, with emphasis on corporate, contracts, mergers and acquisitions and renewable energy. Since joining the Firm in 2006, Luisa has participated in several local and multi-jurisdictional transactions, advising different business groups.

Carolina Lazo is very active in the area of new investment projects, in the energy, environmental, aeronautical, textile and manufacturing sectors, representing national and multinational companies.

Luz Bustamante, has developed her experience in several areas of law, but her main area of expertise is in Intellectual Property law; her knowledge includes the protection of trademark rights and trademark litigation, trademark licensing, copyright, trademark audits, among other topics.

Jaime Rodríguez is a specialist in dispute resolution and has assisted many clients in litigation and extrajudicial agreements to resolve conflicts. Since joining the Firm in 2008, Jaime has represented national and international companies, obtaining excellent outcomes in complex litigations and national and international arbitrations. His experience focuses not only on participating in international arbitrations, but also on advising local and international companies that face administrative procedures or negotiations prior to litigation or arbitration achieving agreements through which the dispute is concluded.

These four new appointments reflect the continuous growth and strength of Arias, which since its establishment in 1942 has been characterized as an innovative and pioneering Firm; a leader in providing legal solutions to its clients inside and outside the Central American region.

For additional information visit www.ariaslaw.com

BENNETT JONES WELCOMES GINO SCAPILLATI AS VICE CHAIR, STRATEGY AND INNOVATION

TORONTO - 27 June, 2017: Bennett Jones is pleased to announce that Gino Scapillati will be joining the firm as Vice Chair, Strategy and Innovation, effective July 1, 2017. He will be based in the Toronto office, supporting Bennett Jones nationally and globally. Gino has held a number of leadership and governance positions at PricewaterhouseCoopers (PwC), including National Managing Partner and most recently, Vice Chair and a member of the Global Board of the PwC Network.

"Gino joining Bennett Jones is all about our clients," says Hugh MacKinnon, Chairman and Chief Executive Officer of Bennett Jones. "We are always looking for different perspectives to business and innovation in today's rapidly evolving marketplace. Gino brings tremendous business and market insight and this will help us stay at the forefront of innovation and client service."

Gino has worked with senior executives and corporate directors of some of Canada's largest companies to help them maximize value and execute business strategy. His career at PwC began in 1981. He was admitted to partnership in 1990.

"Gino was a senior member in PwC's Executive and was responsible for servicing several of our largest clients. As our National Markets Leader, he helped us transform our go to market approach during a period of significant change. Gino's Canadian and PwC global experiences and talents should be a great asset to Bennett Jones," said Bill McFarland, Chief Executive Officer and Senior Partner of PwC Canada.

Gino is a member of the National Council of C.D. Howe Institute and the Ontario Business Advisory Council of the Ontario Chamber of Commerce. He has frequently presented in the Directors Education Program of the Canadian Institute of Corporate Directors.

For additional information visit www.bennettjones.com

BRIGARD & URRUTIA OPENS OFFICE IN CALI

BOGATA – 04 July, 2017: Colombia law firm Brigard & Urrutia Abogados has opened an office in Cali, its first outside of Bogotá.

Antitrust head Alejandro García de Brigard heads the new office, which will offer clients Brigard & Urrutia's full range of services. García and two associates will be stationed at the office full-time. The office opens today.

Firm managing partner Carlos Umaña says: "When looking at the figures it became clear to us that Colombia's economic growth will not be confined to Bogotá and we felt we needed to be closer to our clients."

He believes a presence in Cali will increase the firm's exposure to key local players, and suggests the office opening is the start of a wider expansion process. "Our office in Cali allows us to start our national expansion where we already have a strong client base… it is likely that this will only be our first step in the process of consolidating our presence throughout Colombia," he says.

Cali and the Cauca Valley constitute Colombia's third largest economic centre and include most of the country's coffee-growing and sugarcane industry, and its only port on the Pacific.

For additional information visit www.bu.com.co

CAREY HIRES AN ECONOMIST EXPERT IN VALUATIONS

SANTIAGO - 06 July 2017: In order to strengthen its transfer pricing area and give support to the Antitrust Group, Carey hired ***Mariana Sepúlveda***, economist and former Research Manager of Econsult, company dedicated to economic advice, valuations and corporate finance.

Mariana has more than 15 years of experience in research areas, economic and financing counseling, planning, management control and investor relations. As Senior Economist at Carey, she will assist both the Tax and Antitrust groups and she will complement the firm's services, valuing assets and entities, as well as advising on transfer pricing and financial issues.

Carey's Tax Group, led by partners Jaime Carey and Jessica Power, is currently composed by 26 professionals, including lawyers, certified accountants and law clerks. Along with the other practice groups in the firm, the Tax Group advises its clients on structuring the most complex and important transactions, litigation, tax planning and due diligence processes.

On the other hand, Mariana will also work along the Antitrust Group which is led by partners Claudio Lizana and Lorena Pavic. This practice area, has a team of 14 professionals. It covers all areas of antitrust and regulated market legislation, including litigation before the Antitrust Court (TDLC) and the Supreme Court, as well as advising on investigations and negotiation of agreements with the National Economic Prosecutor (FNE).

For additional information visit www.carey.cl

HOGAN LOVELLS LAUNCHES FINANCIAL SERVICES REGULATORY CONSULTING PRACTICE

Hogan Lovells launches Financial Services Regulatory Consulting practice with hire of Director Steve Murphy. Market first-mover and strategic response to Brexit uncertainty in the financial services sector.

LONDON, 4 July 2017: Law firm Hogan Lovells has launched a new Financial Services Regulatory Consulting practice. The new practice combines both legal and consulting services and provides financial services companies with the ability to easily manage and integrate their combined legal regulatory strategy and compliance needs.

The new practice sits alongside Hogan Lovells' growing portfolio of innovative advisory services around the world which combine legal and non-legal capabilities including cybersecurity, transfer pricing, and strategic communications.

To lead the new consulting offering, Hogan Lovells has recruited Steve Murphy from PricewaterhouseCoopers, where he was a Director in its Regulatory Consulting practice since 2008.

Hogan Lovells Financial Services Regulatory Consulting builds on the firm's current consultative approach to providing project management support to asset managers, banks, building societies, wealth management firms, payment services providers and insurance companies.

Steve brings 25 years of experience in financial regulation and compliance. As well as PricewaterhouseCoopers, his career also includes spells with Ernst & Young, KPMG, Barclays, and a secondment with the Financial Services Authority.

Commenting on the launch of the new Hogan Lovells Financial Services Regulatory Consulting and Murphy's arrival, sponsor partner Emily Reid, who will work closely with Steve, said:

"We are not aware of any other law firm in the UK offering this combination of legal and consulting capabilities for financial services companies. The launch of our new Hogan Lovells Financial Services Regulatory Consulting practice and the arrival of an experienced director in Steve Murphy are well timed. With the uncertainty caused by Brexit, the next few years are likely to see significant upheaval and change for the sector. The ability to provide a complete range of services beyond that which is already provided by our lawyers will be crucial if our clients are to successfully navigate the challenges ahead."

Steve Murphy added:

"Hogan Lovells has a market leading legal regulatory practice and our consulting service will complement this to implement advice and manage clients projects from end to end. It's exciting to be launching a completely new and unique law firm proposition and I am looking forward to working with the team here and growing our offering."

For additional information visit www.hoganlovells.com

BAKER BOTTS

REPRESENTS WESTAR ENERGY, INC. IN REVISED TRANSACTION FOR $14 BILLION MERGER OF EQUALS WITH GREAT PLAINS ENERGY INCORPORATED

Deal Description: July 10, 2017-- Westar Energy, Inc. (NYSE: WR) and Great Plains Energy Incorporated (NYSE: GXP), the parent company of KCP&L, today announced that both companies' boards of directors have unanimously approved a revised transaction that involves no premium paid or received with respect to either company, no transaction debt, no exchange of cash, and is a stock-for-stock merger of equals, creating a company with a combined equity value of approximately $14 billion. Westar Energy shareholders will own approximately 52.5 percent and Great Plains Energy shareholders will own approximately 47.5 percent of the combined company. The new, combined company will provide electric utility service to approximately one million Kansas customers and nearly 600,000 customers in Missouri. The combined company will have a new name, yet to be established.

As a result of the transaction, Westar Energy and Great Plains Energy's operating subsidiaries will become subsidiaries of a new holding company, which will operate regulated electric utilities in Kansas and Missouri. Operating headquarters will be in both Topeka, Kansas, and Kansas City, Missouri. Corporate headquarters will be in Kansas City, Missouri.

Baker Botts represented Westar Energy, Inc. in this transaction.

Baker Botts Lawyers/Office Involved: Corporate: William Lamb (Partner, New York); James Mayor (Partner, Houston); Courtney Fore (Senior Associate, Austin); Chelsea Gaw (Associate, Houston); Allison Lancaster (Associate, Austin); Tax: Don Lonczak (Partner); Employee Benefits: Mark Bodron (Partner, Houston); Stephanie Jeane (Associate).

For additional information visit www.bakerbotts.com

October 21—24, 2017

Registration Now Open

Visit www.prac.org/events.php

BENNETT JONES

VECTOR CAPITAL COMPLETED C$293 MILLION ACQUISITION OF HALOGEN SOFTWARE INC.

TORONTO – 01 May, 2017: On May 1, 2017, all of the issued and outstanding common shares of Halogen Software Inc. were acquired by Saba Software Inc., Vector Capital and its affiliates, and Michael Slaunwhite, Halogen's founder, executive chairman and largest shareholder.

The acquisition was completed by a plan of arrangement under the Business Corporations Act (Ontario).

Bennett Jones LLP acted as counsel to the special committee of the board of directors of Halogen with a team comprised of Barry Reiter, Jonathan Ip, Jesslyn Maurier and Christopher Travascio (M&A), and Joseph Blinick (Litigation).

Date Announced: May 01, 2017
Date Closed: May 01, 2017
Deal Value: $293,000,000
Client Name: Halogen Software Inc.

For additional information visit www.bennettjones.com

BRIGARD & URRUTIA AND CLAYTON UTZ

ACT FOR L CATTERTON IN MAAJI COMBINATION

BOGOTA—JULY, 2017: Consumer goods private equity company L Catterton has hired Australian firm Clayton Utz and Colombia's Brigard & Urrutia Abogados to take control of Colombian bikini brand Maaji.

L Catterton will combine the Maaji with Seafolly, a leading Australian swimwear company it acquired two years ago, to create a global swimwear and beach lifestyle brand. Clayton Utz and Brigard & Urrutia were also counsel to Seafolly.

Seafolly and Manuela and Amalia Sierra, founders and shareholders of Maaji, have signed a strategic alliance under which they incorporated a foreign holding company, through which they will own 100% of Maaji and Seafolly. L Catterton is controlling shareholder of the holding with a 61% interest, while the Sierra sisters and Seafolly's family founders have a minority 18% stake each. The deal was announced on 3 April.

L Catterton was established in 2016 through the partnership of Catterton, luxury goods house LVMH and investment fund Groupe Arnault.

Clayton Utz Counsel to L Catterton and Seafolly included Partners Kounny Rattley and Niro Ananda, and associates Lara Solomons, Niro Ananda and Alex Culas in Sydney.

Brigard & Urrutia Abogados Cousel to L Catteron and Seafolly included Partner Darío Laguado and associates Jeison Larrota, Marc David Schlagenhoff and Catalina Manga in Bogotá.

Counsel to Maaji - Sullivan & Cromwell LLP, Gómez-Pinzón Zuleta Abogados

For additional information visit www.bu.com.co or www.claytonutz.com

CAREY

ASSISTS CHILEAN SOLAR PLANT PROJECT FINANCING

SANTIAGO - 22 June 2017: Chilean firm Carey has helped a consortium led by Japanese trading company Sojitz Corporation obtain financing for a solar project in northern Chile.

Sumitomo Mitsui Banking Corporation, Mizuho Bank and the Iyo Bank were lenders and enlisted four offices of White & Case LLP and Chilean firm Barros & Errázuriz Abogados, which also advised Banco BICE as lender of a VAT facility agreement. The financing closed on 22 June with no value disclosed. Sojitz has a 60% stake in the 98-megawatt Huatacondo project, which is located in the northern Tarapacá region. Its partners, Japanese utilities provider Shikoku and French constructor Eiffage, hold 30% and 10% stakes respectively. The consortium's acquisition of the plant closed on 14 June.

For the project financing - Counsel to the consortium; Carey Partner Felipe Moro and associates Fernando Noriega, Patricia Montt, Diego Lasagna, Valentina Vizcay, José Tomás Hurley, Arturo Poblete, Francisco Urcelay and Valentina Mendozain Santiago; Gibson, Dunn & Crutcher LLP. Counsel to Sumitomo Mitsui Banking Corporation, Mizuho Bank and Iyo Bank White & Case LLP, Barros & Errázuriz; Counsel to BICE Barros & Errázuriz

For the consortium's acquisition Counsel to the consortium - Carey Partner Juan Francisco Mackenna and associates José Tomás Hurley, Arturo Poblete, Francisco Urcelay and Valentina Mendoza in Santiago; Gibson Dunn & Crutcher LLP; Counsel to AustrianSolar Chile Oppenhoff & Partner; Bofill Mir & Álvarez Jana Abogados.

For additional information visit www.carey.cl

|

CLAYTON UTZ

ACTS FOR GFG ALLIANCE IN SUCCESSFUL BID TO ACQUIRE ARRIUM

Melbourne - 07 July 2017: Clayton Utz is advising GFG Alliance, which entered into a binding agreement on Wednesday to acquire Arrium, an integrated Australian steel and mining business, out of administration.

Under the agreement GFG Alliance will acquire Arrium's steel and steel-related businesses, including various businesses trading under the OneSteel brand, Whyalla Port and Rail, and the Whyalla Steelworks - one of South Australia's largest employers.

Clayton Utz partners Paul James, Brendan Groves, and Nick Poole are leading our core team, which includes senior associates Warrick Louey and Anthony Burke and lawyer Craig McDermaid.

Subject to creditor and FIRB approval, the transaction is expected to complete by the end of August.

GFG Alliance is an international industrial, energy, natural resources and financial services group, founded and owned by the British Gupta Family. GFG Alliance has acquired or turned around several businesses in the UK, and comprises the Liberty House Group (steel, aluminum and engineering), the SIMEC Group (energy, infrastructure and resources), GFG Estates and Wyelands (banking, capital and advisory).

The Arrium acquisition is a milestone transaction for GFG Alliance, establishing its presence as a leading participant in Australia's steel industry. Clayton Utz is delighted to be advising GFG Alliance on a transaction of such great significance for the future of the Australian steel industry and the people of Whyalla, South Australia.

For additional information visit www.claytonutz.com

MUÑIZ RAMÍREZ PÉREZ-TAIMAN & OLAYA

ADVISES ENGIE ON BOND ISSUE

LIMA - 06 July 2017: Peruvian energy company Engie received the help of Muñiz Ramírez Pérez-Taiman & Olaya for two corporate bond offerings on the Peruvian stock market.

The deal closed on 26 June. Engie issued its second and third set of corporate bonds, collectively worth US$101.5 million. The offerings are part of Engie's US$500 million corporate bond programme.

Counsel to Engie Muñiz Ramírez Pérez-Taiman & Olaya Partner Andrés Kuan Veng and associate Rocío Izquierdo.

For additional information visit www.munizlaw.com

DAVIS WRIGHT TREMAINE

WORLD-LEADING ULTRASOUND TECHNOLOGY CLIENT VERASONICS WINS FIVE-YEAR INJUNCTION AND DAMAGES, FEES, AND COSTS IN ARBITRATION OVER TRADE SECRET THEFT

SEATTLE - 21 June, 2017: Verasonics, Inc., a leader in ultrasound technology, has won injunctive relief as well as compensatory damages from a Washington state arbitrator in a case of trade secret misappropriation. Eric Walters and Erica Wilson, intellectual property litigators at Davis Wright Tremaine LLP, were pleased to represent Verasonics.

The arbitrator found that Alpinion Medical Systems Company, Ltd., headquartered in Seoul, South Korea, breached both non-disclosure and lease agreements between Verasonics and Alpinion and misappropriated Verasonics trade secrets. Alpinion is a subsidiary of ILJIN Holdings Co., Ltd.

Alpinion is enjoined for five years from marketing or selling its research ultrasound product, the E-CUBE 12R, and any research ultrasound system derived from or based upon Verasonics' trade secret information and/or confidential information that was supplied under the non-disclosure and lease agreements, or using that information for any other purpose. The arbitrator also awarded Verasonics compensatory damages as well as attorney fees and costs.

A privately held company based in Kirkland, Wash., Verasonics provides advanced, flexible tools to researchers and developers in biomedical ultrasound, materials science, earth sciences, and the physics of acoustics and ultrasonics. Verasonics also licenses its technology to companies for use in their commercial products. Verasonics has customers in 28 countries across North and South America, Europe, Asia and Australia. Davis Wright Tremaine has assisted the company since 2012.

For additional information visit www.dwt.com

GIDE

ADVISES RENAULT ON ITS JOINT VENTURE WITH CHINESE AUTOMAKER BRILLIANCE

BEIJING - 07 July 2017: Gide acts as lead counsel to Renault on its recently announced partnership with Brilliance China Automotive Holdings Limited ("CBA"), which will enable Renault to enter the growing light commercial vehicle ("LCV") market in China.

Under a binding framework cooperation agreement signed by the two companies on 5 July 2017 ("FCA"), Renault will acquire from CBA a 49% stake in Shenyang Brilliance JinBei Automobile Co., Ltd., a top player in the LCV industry in China. The resulting joint venture company will manufacture and sell LCVs using Renault's product and technological know-how.

Gide is advising Renault on the PRC law aspects of the project, including on regulatory issues, due diligence of the target company, and drafting and negotiation of the binding FCA.

The Gide team is led by partner Guo Min with the assistance of counsel Ronan Diot and associate Lea Han, working in close collaboration with the Renault Legal Department team led by Sean Caley, Managing Counsel – Asia Pacific.

Shearman & Sterling and Jun He advised the sellers.

For additional information visit www.gide.com

ROUSAUD COSTAS DURAN

ADVISES FINTONIC ON A FINANCING ROUND OF €25 MILLION

BARCELONA – 24 June 2017: Finotic, a pioneer in the area of personal finance management, boosted its growth with an investment in which ING Group and the insurance group PSN participated, among other investors.

The financing obtained will go to the growth of the company in Spain and Latin America.

RCD represented Finotic in the transaction.

For additional information visit www.rcdslp.com

HOGAN LOVELLS

ACHIEVES PRECEDENT-SETTING PRODUCT LIABILITY VICTORY ON BEHALF OF BRISTOL-MYERS SQUIBB IN U.S. SUPREME COURT

WASHINGTON, D.C., 20 June 2017: Hogan Lovells successfully argued and won a landmark Supreme Court case for global biopharmaceutical company Bristol-Myers Squibb. The case, argued by Hogan Lovells partner Neal Katyal, who previously served as Acting Solicitor General of the United States, will protect both federalism and fairness in future commercial litigation. The decision was the last of Katyal's seven cases that he argued before the Supreme Court this year (in six separate oral arguments), which far outpaced any other attorney in the nation, including in the U.S. Solicitor General's Office.

The specific case was brought by allegedly injured users of Plavix, a blood-thinning drug. The Supreme Court's decision limits States' ability to hear mass-tort, product-liability cases brought by plaintiffs that did not purchase or use the product in the State. In particular, the Supreme Court ruled in Bristol-Myers Squib v. Superior Court that product-liability claims brought by out-of-state plaintiffs against Bristol-Myers Squibb in California could not proceed because the plaintiffs that claimed to have suffered injuries were not prescribed and did not take Plavix in the State. The 8-1 decision held that despite Bristol-Myers' extensive contacts with California, the state courts have did not have specific personal jurisdiction over the non-residents' claims.

"Bristol-Myers Squib and Sanofi are very pleased with the Supreme Court's ruling in Bristol-Myers Squibb Co. v. Superior Court. We are hopeful that this decision will provide litigants more certainty regarding where lawsuits can be heard," said Katyal. "At its core, this decision was about basic principles of federalism and fairness in our legal system, and our legal team was deeply proud to be part of the process." Mr. Katyal and his team successfully urged the Supreme Court to grant certiorari in the case last year, and argued the case to its conclusion.

The Hogan Lovells team also included Jessica Ellsworth, Fred Liu, Sean Marotta, Mitchell Reich, and Sara Solow.

In the next week, Katyal will be announcing a personal jurisdiction task force team devoted to ensuring that the contours of the Supreme Court decision will be enforced appropriately throughout the nation.

For more information, see www.hoganlovells.com

NAUTADUTILH

ASSISTED VAN LANSCHOT KEMPEN WITH THE ACQUISITION OF UBS'S DOMESTIC WEALTH MANAGEMENT ACTIVITIES

AMSTERDAM - 09 June, 2017: NautaDutilhh assisted Van Lanschot Kempen with the acquisition of UBS's domestic wealth management activities in the Netherlands. The transaction comprises the client relationships and employees of the wealth management activities of UBS Netherlands, a branch of UBS Europe SE, having currently Assets under Management (AuM) of around EUR 2.6 billion.

The transaction also comprises the products and services of the Netherlands branch of UBS Europe SE. Van Lanschot Kempen will pay an initial acquisition price of EUR 28 million for the activities to be acquired. Van Lanschot Kempen and UBS expect to complete the transaction in the third quarter of 2017.

The NautaDutilh team in this matter consisted of Lieke van der Velden, Edger Kleijer, Jacqueline Clement (all Corporate M&A), Piet Sippens, Tycho de Graaf, Jacqueline van Essen (all I&C, ICT), Larissa Silverentand, Roderick Watson (Financial Law), Niels Hagelstein (Finance), Nina Kielman (Tax), Albert van der Kolk and Joyce Trebus (Employment). The due diligence investigation was led by Willem van der Vossen, Esmee Salomons and Laura Brummelhuis.

For additional information visit www.nautadutilh.com

TOZZINIFREIRE

ADVISES UNDERWRITERS IN BRAZILIAN ETHANOL AND SUGAR COMPANY RAIZEN ENERGIA DEBT TAP

SAO PAULO - 02 June, 2017: TozziniFreire Advogados advised the underwriters for the deal, which closed on 5 May. Raizen Energia receivables issuance worth 969 million reais (US$300 million).

TozziniFreire Advogados Partners Alexei Bonamin and Kenneth Ferreira, and associates Ana Claudia Pires, Lais Claudio and Lucas Fantin acted in the transaction on behalf of Underwriters BB Banco de Investimento, Banco Bradesco, Banco Itaú, Banco Safra and XP Investimentos Corretora de Câmbio.

For additional information visit www.tozzinifreire.com.br

PRAC 62md International Conference
Sao Paulo
October 21—24, 2017

Hosted by TozziniFreire

Registration Now Open
Visit www.prac.org/events.php

PRAC EVENTS


PRAC2016
Barcelona
PRAC 59th
INTERNATIONAL
CONFERENCE
21 - 24 MAY 2016
RCD
ROUSAUD
COSTAS
DURAN SLP
PACIFIC RIM

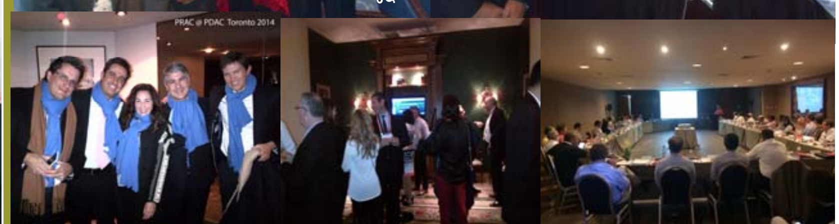

PRAC @ Vancouver 2015


PRAC @ Brisbane 2015


PRAC @ Taipei 2014
PACIFIC RIM
ADVISORY COUNCIL


PRAC @ INTA San Diego


PRAC @ IPBA Hong Kong


PRAC @ PDAC Toronto 2014

PACIFIC RIM ADVISORY COUNCIL

The Pacific Rim Advisory Council is an international law firm association with a unique strategic alliance within the global legal community providing for the exchange of professional information among its 28 top tier independent member law firms.

Since 1984, Pacific Rim Advisory Council (PRAC) member firms have provided their respective clients with the resources of our organization and their individual unparalleled expertise on the legal and business issues facing not only Asia but the broader Pacific Rim region.

www.prac.org

With over 12,000 lawyers practicing in key business centers around the world, including Latin America, Middle East, Europe, Asia, Africa and North America, these prominent member firms provide independent legal representation and local market knowledge.

ABNR Counsellors at Law

Davis Wright Tremaine LLP — Defining Success Together

Estudio Muñiz — Muñiz Ramirez Perez-Taiman & Olaya Abogados

Allende & Brea Abogados

Gide Loyrette Nouel

NautaDutilh

Arias

Goodsill Anderson Quinn & Stifel 1878 — A Limited Liability Law Partnership

Hoet Pelaez Castillo & Duque

rbs richards buell sutton LLP

ARIFA — Arias, Fabrega & Fabrega

Hogan Lovells

RCD Rousaud Costas Duran SLP

Dentons Rodyk

Baker Botts LLP

Kim, Chang & Lee

Santamarina y Steta law solutions

Bennett Jones

Kochhar & Co. Advocates & Legal Consultants

Simpson Grierson

Skrine

Brigard & Urrutia

理律法律事務所 Lee and Li Attorneys-at-Law

SyCip Salazar Hernandez & Gatmaitan

Carey

Clayton Utz

Mulla & Mulla & Craigie Blunt & Caroe — Advocates, Solicitors and Notaries

TozziniFreire Advogados

GIDE
GIDE LOYRETTE NOUEL

PROJECTS (FINANCE & INFRASTRUCTURE) | ALGERIA | 4 JULY 2017

CHANGES TO THE RENEWABLE ENERGY SECTOR IN ALGERIA

For some fifteen years now, the oil industry has been improving the budgetary balance of Algeria, and has enabled the country to make significant investments.

Nevertheless, the fall in oil and gas prices these past three years has highlighted the need for Algeria to make changes to its energy policy. Algeria's signing and ratification of the Paris Agreement on climate change shows the country's desire to commit to an energy transition, which must go hand-in-hand with an economic transition.

NATIONAL PROGRAMME FOR THE DEVELOPMENT OF RENEWABLE ENERGIES

The National Programme for the Development of Renewable Energies, adopted in 2011, was reviewed in 2015 with the aim of achieving production of 22,000 MW dedicated to domestic consumption by 2030, of which over 4,000 MW are to be accomplished by 2020.

This Programme provides for the implementation of a broad range of technological industries, including photovoltaic and wind, which will be the main sources of renewable energy with 13,575 MW and 5,010 MW respectively. The remainder shall be spread between thermo-solar, biomass, cogeneration and geothermal.

In the coming months, the first part of this Programme should lead to a national and international tender for the production of 4,050 MW global capacity, divided into three batches of 1,350 MW each in solar power. These three projects would be located in sites in the south of Algeria, and in the high-plateaux region.

This call for tenders should have been launched in the spring of 2017, but will most likely take place in autumn 2017 considering the recent government reshuffle.

With a view to this procedure, executive decree no. 17-98 dated 26 February 2017, setting the investor tender procedure, was published in the official journal of 5 March 2017 ("**Decree 17-98**").

More recently, executive decree no. 17-166 of 22 May 2017 modified the conditions for obtaining premiums as regards costs for the diversification of electricity production, i.e. guaranteed purchase prices ("**Decree 17-166**").

MAIN POINTS OF THE TENDER PROCEDURE

1. Two types of procedures

Decree 17-98 provides for two types of procedures:

- **The investor tender procedure**

Launched on the initiative of the Energy Minister for pre-determined amounts of renewable energy. The Energy Minister processes the tender procedure.

It should be noted that investors taking part in such a tender depends on their conducting an industrial project (see point 2 below for further details).

- **The competitive bidding procedure**

Launched on the initiative of the Electricity and Gas Regulation Commission ("**CREG**") for offers to provide renewable energies corresponding to a pre-determined minimal power.

The way these two procedures (investor tender and competitive bidding) work together could be clarified.

The tender procedure pertaining to the first part of the Programme on 4,050 MW should fall under the investor tender procedure, detailed below.

2. Bid offer: three main components

Bids submitted in response to an investor tender offer must include, as mandatory:

- **An energy component**

The energy component includes a technical offer and a financial and commercial offer (which will indicate the sale price for each kWh produced, as well as the conditions for reviewing this price).

It should be noted that:

- Electricity production sites are designated by the Energy Minister, on proposal by the Electricity and Gas Regulation Commission.
- The construction of facilities to transmit the energy produced and connect the facilities to the grid shall be at the expense of the investor.

- **An industrial component**

The industrial component must include:

- **An offer to complete an industrial project**:
  - ✓ Decree 17-98 defines the industrial project as an investment in the manufacturing of equipment used in the production of electricity from renewable energy sources and/or the provision of services, according to the conditions provided for in the call for tenders.
  - ✓ The bidder is allowed to not invest in the industrial project and choose one or more third investors that will realise the industrial project and submit a separate bid to this end.
  - ✓ Based on a joint decision by the Energy Minister and the Industry Minister, the tender offer can be limited to an energy component and not include any industrial component.
- **A financial and commercial offer** (including in particular the price of equipment and components manufactured, as well as conditions for review).

- **The economic assessment model**

The compliant offers are classified according to the price of sale of kWh using the economic assessment model. The final selection of the bidder shall be based on the lowest kWh sale price.

The CREG delivers to each accepted bidder the origin guarantee certificate and the authorisation to operate in compliance with the regulations in force.

ELEMENTS FAVOURABLE TO INVESTORS

1. More flexible financing possibilities

It is interesting to note that the obligation to resort to the local financing of investments (excluding the constitution of companies' capital) has been relaxed, since Article 55 of the Finance Law for 2016 now authorises the use of outside financing that is essential to the conduct of strategic investments by Algerian companies, subject to approval on a case-by-case basis by the Government.

Considering the political desire to promote the energy transition in Algeria, projects in the field of renewable energies should be considered as "strategic" and thus be able to benefit from outside financing.

Accordingly, the African Development Bank (ADB) and the French Development Agency (AFD) are considering taking part in financing the Algerian energy transition.

2. Guaranteed purchase prices

Decree 17-166 specifies in particular:

- The concept of guaranteed purchase price as the kWh price of sale, derived from the tender offer;

- The electricity producer retained as part of the tender benefits from the guaranteed purchase price resulting from such tender procedure, after obtaining the authorisations required by regulations in force;

- The purchase price is guaranteed for the entire term of the PPA resulting from the tender procedure.

- The removal of the possibility to readjust the guaranteed purchase price after the first five years.

3. A more favourable investment code

The recent investment code of 3 August 2016 provides for a number of guarantees that benefit foreign investors, regardless of their nationality, including the guarantee to repatriate in foreign currency their investment proceeds, and the acceptance of international arbitration. For further information, please see our newsletters on the new investment code dated 26 April 2017 and 26 August 2016.

Additionally, Algeria has entered into bilateral investment protection agreements with a number of countries, including France and Germany, which offer a certain number of guarantees.

POINTS FOR ATTENTION

1. Partnership with local state-owned companies

Decree 17-98 specifies that the Energy Minister identifies one or more state-owned companies that must jointly (or in "partnership") be involved in creating and operating electricity generation facilities from renewable sources.

The state-owned companies concerned will likely be SONATRACH, SONELGAZ or their subsidiaries (e.g. CEEG, *Compagnie de l'Engineering de l'Electricité et du Gaz*).

Conversely, as regards the industrial project, a partnership with local state-owned companies seems optional.

The concept of "partnership", as defined by Decree 17-98, supposes an equity investment in a new company or an existing company, which triggers the application of the well-known "51/49" rule when a foreign investor is involved.

In this regard, it should be recalled that the participation of a foreign investor in the share capital of any company cannot exceed 49%, regardless of the shareholding conditions (creation of a new company or subscription or acquisition of shares in an existing company).

Nonetheless, it is important to note that the foreign investor may be entrusted with the executive management of the company, hold a majority within its administration and management bodies, and various contract-based mechanisms are in place to mitigate the effects of the minority in shareholders' assemblies.

Additionally, entering into a joint venture with a majority holding state-owned company would result in an economic state-owned company, the consequences of which as regards liability for its executives should not be overlooked and be examined closely.

2. Strong presence of the Offtaker

The PPA, whose duration shall not exceed 25 years, shall be entered into with the system operator, i.e. SONELGAZ (or a subsidiary such as CEEG, *Compagnie de l'Engineering de l'Electricité et du Gaz*). This same Offtaker shall also be considered as an equity partner in the project.

3. Creation of a new Ministry for the Environment and Renewable Energies

A Ministry for the Environment and Renewable Energies was created during a recent government reshuffle. The integration of such Ministry in the current system applicable to renewable energies remains to be seen, with an expected modification of Decree 17-98.

CONTACTS

STEPHANE VERNAY
vernay@gide.com

SAMY LAGHOUATI
laghouati@gide.com

DELPHINE JACQUEMONT
delphine.jacquemont@gide.com

RYM LOUCIF
rym.loucif@gide.com

CLAYTON UTZ

06 JUL 2017

Government tables comprehensive Telecommunications Reform Package

BY KIRSTEN WEBB, SUNITA KENNY

The Government's telecommunications reform package legislation offers improved clarity for network owners and good news for consumers.

Telco-related businesses and consumers will be interested in the Government's recently released legislative package that promises wide-ranging reforms to Australia's telco landscape.

The Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017 and the Telecommunications (Regional Broadband Scheme) Charge Bill 2017 are intended to promote competition and to improve access to broadband services for all Australians, especially those in regional, rural and remote areas, via the following key measures:

- the introduction of a funding mechanism for regional broadband services, which will fund the net costs of NBN Co Limited's fixed wireless and satellite networks;
- the introduction of a statutory infrastructure provider regime; and
- amendments to the superfast network rules to clarify the wholesale only rules applying to high speed broadband networks.

The proposed changes (if passed by Parliament), are expected to take effect from 1 July 2018.

Regional Broadband Scheme

The Regional Broadband Scheme is designed to provide sustainable funding for the National Broadband Network (**NBN**) fixed wireless and satellite networks in regional Australia.

The draft Bills propose an industry charge of around $7.10 per month that carriers would be required to pay for each premises on their network that has an active fixed-line superfast broadband service.

The charge was foreshadowed by Government in its December 2014 response to the Independent Cost-Benefit Analysis of Broadband and Review of Regulation (the Vertigan Review), and is designed to make the existing cost transparent and spread it across all NBN comparable networks.

Statutory Infrastructure Provider (SIP) regime

The Bill implements a new SIP regime to provide industry and consumers with certainty that all premises in Australia will have access to infrastructure that supports the delivery of superfast broadband services.

The proposed SIP arrangements require NBN Co to connect premises to its network and supply wholesale high speed broadband services to phone and internet service providers. During the rollout of the NBN, NBN Co will have SIP obligations in all areas where it is supplying carriage services. After the rollout is complete (and an area is deemed to be Ready for Service) NBN will become the default statutory infrastructure provider. In some new developments, it may be the case that other carriers will be able to fulfil the role of SIP, for example, where a carrier is the sole provider of infrastructure in a new development. The SIP obligation also provides wholesale access to broadband infrastructure for retail service providers so they can service their retail customers .

There are three key elements to the proposed SIP regime—identifying the SIP, the obligations of the SIP, and the processes to be followed when a SIP does not or cannot meet the SIP obligation.

In good news for consumers, one primary obligation of the SIP is to offer a wholesale broadband service supporting peak speeds of at least 25 mbps download and 5 mbps upload regardless of location. Put differently, this ensures that all Australians – regardless of where they live – will be able to order a high speed broadband service. SIPs must also supply wholesale services that retail providers can use to support voice calls on fixed-line and fixed wireless networks.

Reform of the level playing field rules

The aspect of the package which is said to promote competition is the reform of the "level playing field".

Currently, the superfast network rules require that superfast fixed line networks servicing residential and small business customers must supply a wholesale bitstream service to access seekers and operate on a wholesale-only basis (ie. be structurally separated). There are a number of exceptions to these rules, such as high speed networks that were built prior to 1 January 2011.

The key changes to the rules are:

- The Bill removes regulation of networks servicing small business customers, which will enable these providers to benefit from greater competition in the market.
- The changes allow the ACCC to exempt small smart-up networks (operators with fewer than 2,000 retail residential customers on fixed-line networks) from separation rules, in order to encourage entry into the market and the growth of new providers. The statutory exemption could be extended in the future (by regulation) to operators (with up to 12,000 retail residential services).
- These reforms would effectively allow network carriers (other than Telstra and NBN Co) to be vertically integrated – that is, to operate both wholesale and retail businesses on a functionally separated (that is, arm's length) basis, subject to ACCC approval. Networks operating on this basis will be required to meet core requirements, including the operation of separate wholesale and retail business units, and the provision of wholesale layer 2 bitstream service.
- Finally, all services supplied on wholesale-only or functionally separated networks will be subject to clear non-discrimination obligations.

What should we do?

As noted in the second reading speech, the Bill makes important changes to the broadband regulatory framework to strengthen the provision of superfast broadband infrastructure across metropolitan, regional, rural and remote Australia.

As many businesses would already be familiar with the broad reforms (given the extensive policy development and public consultation process), now is the time to more closely review the legislation, including the expanded powers and enforcement tools that will be provided to the ACCC. Some telco providers will be affected by the reforms and may wish to seek advice regarding compliance with the proposed structural separation requirements.

GET IN TOUCH

Kirsten Webb

PARTNER, SYDNEY
+61 2 9353 4608
kwebb@claytonutz.com

Sunita Kenny

SENIOR ASSOCIATE, SYDNEY
+61 2 9353 5724
skenny@claytonutz.com

CONTACT US

Sydney	+61 2 9353 4000	**Melbourne**	+61 3 9286 6000
Brisbane	+61 7 3292 7000	**Perth**	+61 8 9426 8000
Canberra	+61 2 6279 4000	**Darwin**	+61 8 8943 2555

www.claytonutz.com

NautaDutilh

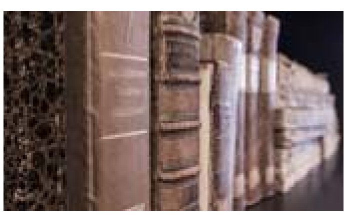
Corporate

Belgium | Luxembourg | Netherlands | EU

Introduction of UBO-registers in Benelux running late

Thursday 6 July 2017

On 26 June 2017 the deadline has passed for the implementation of the European directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the Fourth anti-money laundering directive). With this directive, among other things, the register of ultimate beneficial owners (UBO-register) was introduced. We have previously informed you about the proposed content of the Dutch UBO-register and the effect of its introduction. The EU member states had two years to implement the directive in national law. It is now apparent that many member states have not met this deadline. In this newsletter we will provide a brief update on the status of the relevant legislation in the Netherlands, Belgium and Luxembourg.

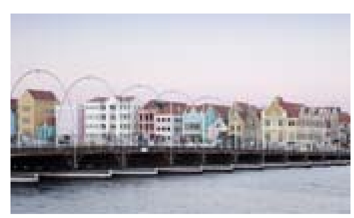


The Netherlands

A consultation on a draft bill on the registration of UBOs in the Netherlands was published for consultation purposes on 31 March 2017. On 23 June 2017, the Dutch government announced that a definitive bill can be expected in the second half of 2017.

Belgium

A bill on the prevention of money laundering and terrorist financing was approved by the Belgian Council of Ministers on 22 June 2017. The bill imposes on companies and other legal entities an obligation to collect information about their UBOs and register it in a UBO-register. The bill has been submitted to the King for signing and is expected to be published this summer. However, its content has not yet been made available.



Luxembourg

The implementation of the Fourth anti-money laundering directive will take place in two separate bills. On 26 April 2017 a bill implementing provisions, with the exception of the provisions on the UBO-register, was introduced in the Luxembourg Parliament. The bill regarding the implementation of the UBO-register is expected to be brought before Parliament soon.

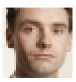
What this means for you

The introduction of the UBO-register is a reality or, at any rate, simply a matter of time. Because the implementation deadline has passed and the directive therefore has direct effect, we would advise legal entities, partnerships and other entities to start identifying and gathering the necessary information about their ultimate beneficial owners, even where the implementation process has not yet been completed. As far as the Netherlands is concerned, the information that will have to be registered – based on the relevant draft bill – is summarised in this overview. Obviously, actual registration can only begin once the UBO-register is operational. It is still unknown at this point what form the Belgian and Luxembourg UBO-register legislation will take.

To be continued...

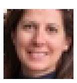
We will continue to report to you on developments on this front; you can expect another newsflash from us later this summer. There is also a page on our website with updates on the registration of UBOs in the Netherlands, the introduction/status of UBO-registers in other EU countries and anti-money laundering legislation.

Contact me



Maarten Buma | Rotterdam | +31 10 22 40 182

Philippine de Wolf | Belgium | +32 2 566 81 88



Yoanna Stefanova | Luxembourg | +352 26 12 29 51

NautaDutilh | Challenge the obvious

International Law Firm | Amsterdam · Brussels · London · Luxembourg · New York · Rotterdam

TozziniFreire Advogados

June 27, 2017

BRAZIL PRODUCES MAJOR DECISION ON CONFIRMATION OF FOREIGN AWARDS

Arbitrator's failure to disclose potential conflict of interest prevents confirmation of foreign arbitral award in the country

By Fernando Eduardo Serec & Antonio Marzagão Barbuto Neto, arbitration partners in TozziniFreire Advogados

In a widely publicized decision rendered on April 19, 2017, the Superior Court of Justice (STJ) held that an arbitrator's failure to disclose material facts affecting his independence and impartiality precludes the confirmation of the respective arbitral award in Brazil, as it violates the national public policy.

The case stemmed from the sale of the Ometto sugar cane and ethanol business to the Spanish company Abengoa. The Spanish company commenced arbitration proceedings under the auspices of the ICC, in which it basically sought damages arising from seller's alleged misrepresentation concerning the crushing capacity for one of the mills.

A panel of three arbitrators seated in New York found in favor of Abengoa and awarded the Spanish company over US$ 110 million in damages.

Shortly after the arbitral award was rendered, it was discovered that the chairman of the arbitral tribunal failed to disclose that his law firm had received significant legal fees from Abengoa during the course of the arbitration. The chairman admitted to failing to conduct the proper conflicts check, but denied any knowledge of his firm's relationship with Abengoa at the time the award was rendered.

Ometto then filed an action to annul the award before the Southern District of New York. However, the federal court did not vacate the arbitral award holding that the petitioner failed to demonstrate the existence of evident partiality under a more stringent interpretation of the Federal Arbitration Act. The Second Circuit upheld this decision and the Supreme Court refused to hear the matter, even though the Ninth Circuit applies a different test of evident partiality to annul arbitral awards in similar situations.

Ometto's last stand would be before the Superior Court of Justice (STJ), the highest court on federal law issues and also responsible to weed out foreign decisions that violate fundamental tenets of Brazilian law.

The STJ has a clear pro-arbitration position on foreign arbitral awards, as it confirms most of the foreign decisions. The court appropriately exercises restraint in analyzing the merits of cases already decided by arbitral tribunals seated abroad.

However, the STJ does not rubber-stamp all decisions submitted for confirmation. Consistent with Article V(2)(b) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Brazilian Arbitration Act specifically authorizes the STJ to refuse confirmation of awards that violate the national public policy. In other words, awards that violate fundamental principles of Brazilian law will not be recognized in this country.

The STJ rejects most public policy defenses as an undue attempt to re-litigate the matter. It is only in those rare circumstances, in which fundamental principles of Brazilian law are threatened, that the STJ interferes. That was exactly the case in the Abengoa v. Ometto dispute, according to the STJ.

By an 8 to 1 decision, the STJ held that “the chairman’s failure to disclose to the parties objective elements that compromise his impartiality and independence under Brazilian law prevents the confirmation of the respective awards in this country”.

The court further stated that “given the contractual nature of arbitration, which underscores the trust relationship between the parties and the arbitrator, the breach of an arbitrator’s duty to disclose any circumstances that are reasonably capable of casting a doubt over his impartiality and independence prevents the confirmation of the arbitral award in this country.”

Independence and impartiality of arbitrators represent an absolute requirement of all arbitral proceedings; they are essential to arbitrators’ judicial role and, as such, represent a fundamental principle of both Brazilian and international arbitration. For this reason, arbitrators have a duty to disclose facts that affect their independence and impartiality and failure to do so is likely to be sanctioned by the Brazilian courts, as indicated by the STJ’s recent decision.

The recent decision in the Abengoa v. Ometto saga appears to set the tone for the STJ’s role during confirmation proceedings. The court will (as it should) continue to exercise restraint when analyzing public policy defenses. However, the justices sitting on the nation’s capital are poised to safeguard the integrity of the arbitration process by “repealing only those actions and legal effects that are absolutely incompatible with the Brazilian legal system”.

www.tozzinifreire.com.br

New Federal Volatile Organic Compounds Reduction Regulations for the Petroleum Sector

May 31, 2017 | Thomas W. McInerney, Mike Barrett and Kay She

The government of Canada has released its proposal for the first federal regulations on volatile organic compound (VOC) emissions applicable specifically to the petroleum sector, titled *Regulations to Reduce the Release of Volatile Organic Compounds (Petroleum Sector)*.

The proposed regulations cover facilities(Facilities) that produce liquid petroleum products by means of processing (using distillation) crude oil or bitumen, or partially refined feedstock derived from crude oil or bitumen, and requires them to regularly check and repair VOC leaks from equipment, use cleaner technologies to minimize emissions, and monitor and report results.

The government expects 18 petroleum refineries, 6 upgraders and 2 petrochemical facilities to be affected by the proposed regulations, which will be enacted under the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33, and is part of the "Pan-Canadian Framework on Clean Growth and Climate Change" report to meet greenhouse gas reduction targets.

The proposed regulations are divided into four categories: (i) Leak Detection and Repair Requirements; (ii) Requirements for Certain Equipment Components; (iii) Fenceline Monitoring Requirements; and (iv) Reporting Requirements. The proposed regulations contemplate fenceline monitoring requirements applying from and after January 1, 2018, with the bulk of the other requirements applying from and after July 1, 2019.

I. Leak Detection and Repair Requirements

Inventory

- Operators must maintain an up-to-date inventory of all equipment components in a system, if any part of the system comes into contact with a fluid that contains 10 percent or more VOCs by weight.
- Certain equipment components will be excluded from the inventory, given low likelihoods of VOC releases, such as seal-less pumps, bellows seal valves and diaphragm valves.

Inspections

- Operators must conduct inspections using sniffers in accordance with U.S. EPA Method 21 or using optical gas imaging cameras.
- Operators must complete three inspections per year of all equipment components in the inventory, and weekly visual inspections of all pumps in their inventory.

- Inspectors for Facilities must complete training in the use of leak detection instruments and in conducting leak inspections using those instruments, prior to conducting inspections.
- Pumps that have a dual mechanical seal system with a barrier fluid system and meet certain standards will be exempt from inspection.

Leak Repairs

- Operators must quantify any identified leak, using a sniffer, before any repairs are made.
- Leaks are classified as "significant leaks" if: (i) for compressors, the leak results in a VOC concentration of 1,000 ppmv or more; or (ii) for all other equipment components, the leak results in a VOC concentration of 10,000 ppmv or more until December 31, 2024, and of 1,000 ppmv or more thereafter.
- Significant leaks must be repaired within 15 days of detection, within 60 days if the repair cannot be completed within 15 days, or during the next facility shutdown if the repair requires a full or partial facility shutdown.
- Operators must replace equipment that experiences three significant leaks over 24 consecutive months.

II. Requirements for Certain Equipment Components

Open-Ended Lines

- Operators must plug the ends of a pipe to minimize the release of VOCs into the environment except during operations that require the ends of a pipe to be open.

Pressure Relief Devices and Sampling Systems

- Pressure relief devices and sampling systems connected to pipes must be designed and used in a manner that minimizes release of VOCs into the environment.
- If a pressure release occurs, corrective action must be taken in 6 days.

Compressors

- Operators must equip compressors with either a mechanical seal system with a barrier fluid system or a closed-vent system to capture VOC leakage.

III. Fenceline Monitoring Requirements

Samples and Sampling Locations

- Operators must establish at least 12 sampling locations around their Facilities and collect samples every 14 days, from April to December.
- Operators must analyze the samples to determine the concentration of benzene and 1,3-butadiene, as well as the total concentration of all retainable VOCs.

Exception

- Operators will be able to decrease the analysis frequency for 1,3-butadiene from every 14 days to every 6 months, if 19 consecutive results are obtained that are below the applicable detection limit.

IV. Reporting Requirements

- Operators must carry out certain activities in relation to record keeping, reporting and auditing. Reporting methods to the Minister of the Environment are still under consideration to maximize alignment with other jurisdictions and the use of single-window reporting tools, where available and appropriate.

Stakeholders have until July 27, 2017, to provide comments to Environment and Climate Change Canada on the proposed regulations.

In tandem with the proposed regulations, the government has also proposed *Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector)*, which introduces facility and equipment level standards to reduce fugitive and venting emissions of hydrocarbons, including methane, from Canada's oil and gas industries.

We would be pleased to discuss any aspect of the developing emissions regulatory environment in the provincial, territorial or federal jurisdiction.

www.bennetjones.com

NEWSALERT

Chilean Central Bank issues new Payment Cards regulations

Law No 20,950, which authorizes the issuance of prepaid cards by non-banking entities, granted the Chilean Central Bank (the "Central Bank") the authority to issue certain necessary regulations for its implementation.

Nevertheless and beyond the specific task, the Central Bank has decided to perform a comprehensive and systemic review of the so called "retail" payment methods in Chile, through the issuance of an entire new regulation, which comprehends the issuance and operation of the different kind of cards that currently exist, and which has been published in the Official Gazette on June 30, 2017 (the "New Cards Regulation").

Main innovations

1.- Reorganization and systematization of the existing regulatory framework

Until now, the card issuance and operation rules were contained in Chapters III.J.1, III.J.2 and III.J.3 of the Financial Regulations Compendium issued by the Central Bank (the "Compendium"), regarding credit, debit and banking-issued prepaid cards, respectively.

In enacting the New Cards Regulation, the Central Bank has concluded that certain regulatory asymmetries and common elements in all of the existing cards made necessary a new systematization of the existing regulations, and has decided to address the issuance of "Payment Cards" (understanding as such, altogether, the credit, debit and prepaid cards) in a new chapter III.J.1, but ruling the particular aspects of the different payment methods in three new sub-chapters ruling credit cards (III.J.1.1), debit cards (III.J.1.2) and banking and non-banking prepaid cards (III.J.1.3), and establishing the Payment Cards operation rules in a new chapter III.J.2, of the abovementioned Compendium.

2.- New regulation applicable to the issuance of prepaid cards by non-banking entities

In accordance with Law No 20,950, the non-banking issuers of pre-funded payment cards (“Prepaid Cards”) shall be special purpose corporations organized in Chile under the terms of Law No 18,046, and their exclusive purpose must be the issuance or operation of Prepaid Cards. The Central Bank, in the new sub-chapter III.J.1.3 of its Compendium, has established the new specific requirements that will be applicable to such issuers, among which it is possible to highlight the following:

1. The obligation to register in the new Cards Issuers Registry, in accordance with the new regulation that for such purposes the Superintendence of Banks and Financial Institutions (“SBIF”) shall issue.
2. The obligation to keep at all times, the minimum paid capital and reserves required by the New Cards Regulation, which is at least 25,000 *Unidades de Fomento* (USD1,000,000 approximately), and to constitute a liquidity reserve, in accordance with the algorithm established to that effect.
3. Information and periodical reporting obligations to SBIF, including the immediate notice that must be given to said institution, in case of not fulfilling with any payment obligation, in order to apply the economic recovery program established in the new article 26 *bis* of the General Banking Act.

The new sub-chapter III.J.1.3 also rules conditions, limits and characteristics applicable to the Prepaid Cards, establishing different regulatory regimes depending if the Prepaid Cards are issued remotely or in-person, or nominally or to the bearer.

3.- Review of the Payment Card Operator notion

3.1.- New concept and applicable requirements

The New Cards Regulation defines the Payment Card operator as the legal entity that performs the <u>settlement and/or the payment</u> of the operations owed to the affiliated entities because of the use of the Payment Cards, in accordance with the title III of chapter III.J.2 of the Compendium.

Consequently, the “*authorization and registration*” of transactions that formerly were part of the definition of an operator were replaced by the underlined concepts, and nowadays, it is possible to request the performance of said activities to a Payments Processing Service Provider (“PSP”) under the terms that will be explained below.

The new regulation also establishes a new algorithm for the minimum paid capital and reserves requirements applicable to Payment Card operators.

3.2.- Elimination of the requirement of having a direct agreement with the issuer

Until before the New Cards Regulation, only the legal entities that had an agreement with the card issuer were able to become the operator of such cards. The New Cards Regulation modifies the operator definition, expressly allowing (but not requiring) that the operation activity be performed by legal entities without having a direct agreement with the Payment Cards issuers, to the extent that said operators directly assume the payment responsibility with the affiliated entities.

The abovementioned requires that both the Payment Cards operators and issuers previously adhere to a cards network or system linked to a “Brand Holder”, understanding as such, the legal entity that is the owner, or that has the representation or license of the card brand, who in turn can grant licenses for the use of such brand by one or more Payment Card systems who adheres to said brand. [1] The New Cards Regulation establishes the requirements that the brand must have and the minimum requirements applicable to the contracts to be entered into with the Brand Holder.

4.- Payments Processing Service Providers

The New Cards Regulation introduces the Payments Processing Service Providers figure, expressly excluding them from the application of the regulations regarding Payment Cards operators, to the extent that they provide the Payment Cards issuers or operators one or more services related to (i) the authorization and registration of transactions; (ii) the affiliation of entities to the system; (iii) the supply of electronical channels and (iv) as an exception, and in a very restricted form, the settlement and payment of amounts owed to the affiliated entities.

5.- Other innovations

The New Cards Regulations also introduces regulations regarding frauds and fraudulent use of the Payment Cards, Chilean Anti Money Laundering Authority (*Unidad de Análisis Financiero*) reporting obligations, the operation of “closed” cards and under “off-line” form, among others.

Validity

The New Cards Regulation is in force since its publication in the Official Gazzette on June 30, 2017, without the prejudice of the deferred validity of some specific requirements, in accordance with its transitory articles, and of the necessary instructions that SBIF must issue in order to implement certain matters.

---

[1] Provided that it does not perform Payment Cards issuance or operation activities under the terms established in the New Cards Regulation, the Brand Holder is not subject to its regulations.

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Carey contact.

Peralta, Diego

Partner

+56 2 2928 2216

dperalta@carey.cl

Lasagna, Diego

Associate

+56 2 2928 2216

dlasagna@carey.cl

Carey y Cía. Ltda.

Isidora Goyenechea 2800, Piso 43

Las Condes, Santiago, Chile.

www.carey.cl

Hogan Lovells

China's draft data localisation measures open for comment

4/18/2017

On 11 April 2017 the Cyberspace Administration of China (the "**CAC**") published a circular calling for comments on its *draft Security Assessment for Personal Information and Important Data Transmitted Outside of the People's Republic of China Measures* (the "**Draft Export Review Measures**").

The passage of the *People's Republic of China Cyber Security Law* in November 2016 (the "**Cyber Security Law**") left many questions unanswered as to the practical scope and effect of this important new piece of legislation (please see our briefing **here**). With less than two months to go before the implementation of the Cyber Security Law on 1 June, many outside observers were expecting to have seen a significant volume of implementing legislation demarcating boundaries around the expansive scope and intrusive nature of the Cyber Security Law. For those familiar with China's typical approach to legislative drafting, in which implementing rules often see the light of day after the law comes into effect, the issuance of the Draft Export Review Measures at this time may come as a welcome development.

The main legislative purpose of the Draft Export Review Measures is to clarify the process and requirements relating to the data localisation requirements in the Cyber Security Law, one of the most controversial aspects of the law. While the Draft Export Review Measures do add a significant level of implementing detail as to the practicalities of compliance, we expect that for many multi-national corporations ("**MNCs**") with operations in, or doing business with, China, the nature of the clarifications do not go in the direction that they would have wanted.

Please click **here** for the full article.

Contacts

Jun Wei

O±ce Managing Partner Beijing

Roy G. Zou

Partner Beijing

Liang Xu

Partner Beijing

Philip Cheng

Partner Shanghai

Andrew McGinty

Partner Shanghai

Mark Parsons

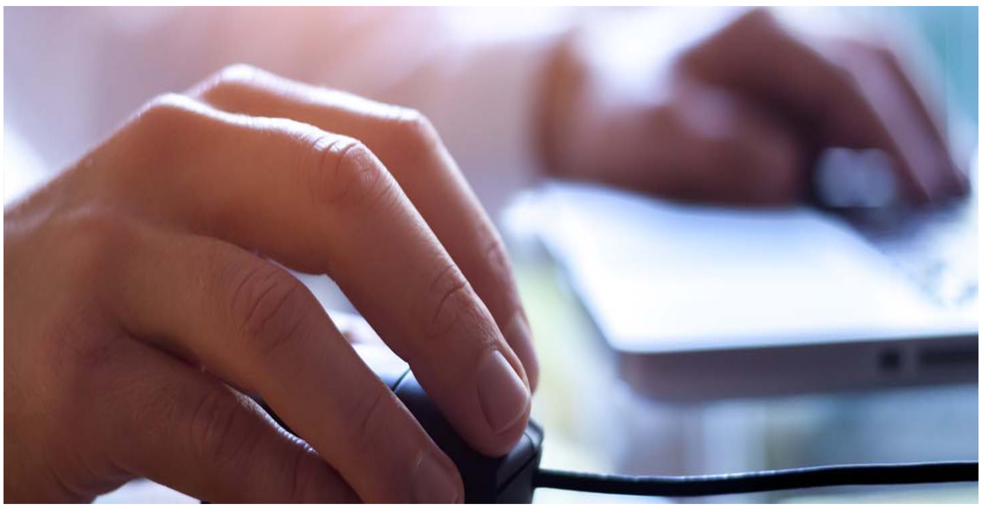
Partner Hong Kong

> Read the full article online)

PRESS ROOM

TRANSFER-PRICING INFORMATIVE STATEMENT IN COSTA RICA

June, 2017



The new regulatory requirement on transfer pricing has been delayed. Resolution DGT-R-28-2017 was published last week in the official newspaper La Gaceta. This publication modifies resolution DGT-R-44-2016, which established the obligation to file an annual informative tax return on transfer pricing.

The new resolution states in its Transitory I the suspension of the filing of the informative tax return, which initially was established for the month of June of this year. The deadline for submitting the informative tax return will be suspended until the Tax Administration communicates the date and the electronic means for the presentation of the requirement.

The resolution DGT-R-28-2017 obliged the Tax Authorities to notify three months in advance, the date and electronic means for filing the transfer pricing informative tax return. These three months will allow taxpayers to adjust their computer systems to perform the required data transmission.

ABNR
COUNSELLORS AT LAW

NEWS DETAIL

28/04/2017

OJK'S REGULATION ON FINANCIAL TECHNOLOGY-BASED LENDING SERVICES

To support the development of technology-based financial industry in Indonesia, in December 2016, the Financial Services Authority ("OJK") issued OJK Regulation No. 77/POJK.01/2016 regarding Technology-Based Fund-Lending Services ("POJK 77/2016"). In its press release, the OJK stated that the regulation was also designed to protect consumer and national interests while at the same time providing opportunities for local providers of financial technology (Fintech) to grow and expand and contribute to national economy.
OJK's "LPMUBTI", the acronym for Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi, or Financial Technology-Based Money Lending Services or Fintech Peer-to-Peer Lending (Fintech P2P) platforms are meant to facilitate the provision of cash funds on an expeditious, easy and efficient basis especially for micro, small, and medium scale business operators (UMKM) to boost their competitiveness.

POJK 77/2016 sets out a range of comprehensive guidelines for the organization of P2P Lending Services. It defines P2P lending services as financial services which are provided via online systems and which facilitate meetings between lenders and borrowers for the purpose of entering into loan agreements in the Indonesian Rupiah currency.

The P2P lending scheme involves three principal parties: (i) Providers, which are Indonesian legal entities which obtain funds from lenders and pass them on to borrowers; (ii) Borrowers, which are Indonesian citizens or legal entities; and (iii) Lenders, which are Indonesian and/or foreign citizens and/or entities, as well as international organizations. The lending transaction is to be effected by the parties' entering into two types of agreement: (1) Agreement between Providers and Lenders; and (2) Agreement between Lenders and Borrowers. Both agreements must be drawn up in an electronic form. Providers are restricted by the following rules:

- Providers must be established as a legal entity in the form of a limited-liability company as meant by Law No. 40 of 2007, or in the form of a cooperative as meant by Law No. 25 of 1992.
- The maximum direct or indirect foreign share ownership in Providers in the form of a limited-liability company which are established and owned by foreign citizens and/or legal entities is 85% of the total issued capital.
- Providers are required to have IDR 1 billion in capital (i.e. paid-up capital for a limited-liability company and self-capital for a cooperative) at the time they apply for registration and IDR 2.5 billion at the time they apply for the license. Limited-liability companies or cooperatives intending to engage in the P2P Lending Services business are required to register with and subsequently apply for a license to the OJK.

- Providers are prohibited from conducting other businesses outside the P2P Lending Services, such as acting as lender or borrower, providing security or guarantee for other parties' debt and issuing bonds.

It should be noted that parties which had been engaging in this type of lending services before the issuance of POJK 77/2016 are required to register with the OJK by June 2017 at the latest. (*by: Miriam Andreta*)

THE SEAFARERS' BILL OF RIGHTS

Trishelea Sandosam highlights the key amendments to the Merchant Shipping Ordinance 1952

INTRODUCTION

Tides have changed. In the wave of the 21st century, the global shipping community has increasingly recognised the importance of balancing growth of trade with protection of rights of seafarers. How does Malaysia fare on this front?

Malaysia has ridden these shifting tides by ratifying the Maritime Labour Convention 2006 ("MLC 2006") on 20 August 2013. Following the ratification of the MLC 2006, the Merchant Shipping Ordinance 1952 ("MSO 1952"), Malaysia's foremost shipping legislation, was amended pursuant to the Merchant Shipping Ordinance (Amendment) Act 2016. The amendments came into operation on 1 March 2017 to anchor the provisions of the MSO 1952 with the requirements imposed by the MLC 2006.

This article will provide a brief overview of the MLC 2006 and set out the key provisions contained in the amendments to the MSO 1952.

WHAT IS THE MLC 2006?

Often hailed as the "bill of rights" for seafarers, the MLC 2006 was developed by the International Labour Organisation to establish minimum working and living standards for seafarers. It came into force on 20 August 2013 and has currently been ratified by 81 countries including leading shipping nations such as the United Kingdom, Singapore, Korea and China, which represent approximately 91% of the world's gross tonnage.

The MLC 2006 consists of Articles and Regulations which outline the core rights, principles and basic obligations of countries ratifying the MLC 2006. There is also the Code which comprises mandatory standard and non-mandatory guidelines providing details for implementation of the MLC 2006.

THE MSO 1952 AMENDMENTS

The main amendments are set out in the new Part III, which completely replaces the former Part III, and offers a more concise read than its predecessor. The provisions of Part III are divided into various sections which include manning and qualification, conditions of service, wages, health, accommodation and provisions, and conduct and discipline.

Who does Part III apply to?

<u>Owners</u> - The definition of owner is wide and includes any person who has interest in the ownership of the ship, a charterer, or a person responsible for the navigation and management of the ship, in circumstances where neither the owner nor the charterer is responsible for the same.

<u>Seafarers</u> – The previous term "seaman" has been dispensed with in favour of the MLC term "seafarer" which now includes a master. Persons such as pilots, repair and maintenance technicians, and military personnel are excluded from the definition of seafarers.

<u>Ships</u> – The bulk of the provisions in Part III apply to Malaysian ships, while a number apply to both Malaysian and foreign ships. The exempted categories of ships include government or state owned ships, fishing vessels, pleasure yachts, Malaysian ships trading or operating exclusively within Malaysian ports, FPSO and FSO vessels.

Unit No. 50-8-1, 8th Floor, Wisma UOA Damansara, 50 Jalan Dungun, Damansara Heights, 50490 Kuala Lumpur, Malaysia.
T: +(603) 2081 3999 F: +(603) 2094 3211 E: skrine@skrine.com W: www.skrine.com

What are the minimum standards?

(1) Manning and qualification

Safe manning - Before a ship can embark on a voyage or excursion, she must have the sufficient number of ship personnel as prescribed by the safe manning document issued by the Director of Marine (for Malaysian ships) or the flag state (for foreign ships). The penalty for non-compliance is a fine not exceeding RM100,000 and the possibility of detention by the Director of Marine if the ship is in Malaysian waters.

Certification and training – Owners are to provide adequate training to seafarers who must also hold the relevant certificates issued by the Director of Marine or other recognised countries/training institutions to prove their competency and qualification to serve on a ship.

Minimum age – Seafarers employed on board a Malaysian ship must now be at least 16 years of age. Limitations are also imposed on the timing and type of work that may be carried out by seafarers below the age of 18 years.

(2) Conditions of Service

Employment contract – Seafarers employed on board a Malaysian ship must have a signed employment contract and have been given an opportunity to examine its terms beforehand. Such contract is deemed to be breached if the owner fails to provide work. This seafarer's employment contract is distinct from the article of agreement ("Article of Agreement") required to be signed between the master of every ship and the seafarer whom the master carries to sea from any port in Malaysia.

Hours of rest – Seafarers on board Malaysian ships are required to be given at least 10 hours of rest in a day, and 72 hours of rest in a week. Special conditions apply to seafarers below the age of 18. In calculating hours of rest, short breaks not exceeding 1 hour or breaks for meals are excluded. Masters or owners who fail to comply face a maximum penalty of RM100,000 on conviction.

Leave – Minimum annual leave of 2.5 calendar days per month of employment must be provided to seafarers employed on Malaysian ships. These seafarers are also entitled to shore leave to benefit health and well-being, consistent with the operational requirements of their position. A maximum penalty of RM 50,000 is imposed on owners who do not provide the minimum annual leave to their seafarers.

Termination of contract – A notice period of 14 days, or salary in lieu thereof is required for termination of the employment contract by either party, except in the event of wilful breach of contract or misconduct. In the event of a finding of misconduct after due inquiry, the seafarer may be dismissed without notice or may be subject to a lesser punishment including suspension without wages for not more than two weeks. Notwithstanding these provisions on termination, seafarers employed on board Malaysian ships with employment contracts governed by Malaysian law may be subject to the Industrial Relations Act 1967, in which case any termination of contract by the owner must be with just cause or excuse.

Repatriation – Seafarers on board Malaysian ships are entitled to free repatriation. Owners are prohibited from requiring an advance payment of these potential repatriation costs from the seafarers or recovering the costs of repatriation from wages, except in cases of default by seafarers.

Unit No. 50-8-1, 8th Floor, Wisma UOA Damansara, 50 Jalan Dungun, Damansara Heights, 50490 Kuala Lumpur, Malaysia.
T: +(603) 2081 3999 F: +(603) 2094 3211 E: skrine@skrine.com W: www.skrine.com

Seaworthiness – There is an implied obligation on the owner in every seafarer employment contract for him or his agent to use reasonable means to make the ship seaworthy at the beginning of the voyage, and keep the ship seaworthy during the entire voyage.

(3) Wages and Deductions

Seafarers on Malaysian ships must be paid wages, including overtime and holiday pay, in accordance with the prescribed timing and method, subject to the deductions permitted by the amendments. The seafarer employment contract is deemed to be broken upon failure by the owner to comply with these obligations. Additionally, the owner of the ship would be liable to a fine between RM50,000 and RM300,000.

(4) Social Security, Health, Accommodation and Provisions

Owners of Malaysian ships must make contributions under the Malaysian Employees Social Security Act 1969 and Employees Provident Fund Act 1991 in respect of Malaysian or Malaysian permanent resident seafarers. Further, owners must also provide medical care, sickness benefit and employment injury benefit to all seafarers, regardless of nationality. Failure to comply carries a fine not exceeding RM200,000 or a maximum term of imprisonment of two years or both.

Owners of Malaysian ships must further ensure that: (a) they are in compliance with the standards for health and medical care and occupational safety; (b) seafarers working on board their ships are medically fit; (c) they provide and maintain accommodation and recreational facilities for the seafarers; and (d) they provide sufficient drinking water and food of reasonable nutritional value, quality and variety to seafarers serving on board.

(5) Documents and Returns

It is a requirement that Articles of Agreement must be signed before the Port Officer or other officer authorised by the Director of Marine and kept updated and available for inspection when necessary. Penalty for non-compliance is a fine not exceeding RM25,000.

Malaysian and foreign seafarers employed on board Malaysian ships are required to hold a seafarer record book and a valid seafarer identity document. Additionally, foreign seafarers must be registered at a port office. Non-compliance may result in a penalty not exceeding RM5,000 upon conviction.

(6) Conduct and Discipline

The new sections 114 and 115 of the MSO 1952 provide penalties for the following conduct of seafarers, unless the seafarer can avail himself of the defences contained in section 114(2), that is: (a) conduct endangering ship, structures or persons - applicable to seafarers on board Malaysian ships or on board foreign ships within Malaysian waters; and (b) disobedience of lawful commands or neglect of duty – applicable to seafarers on Malaysia ships.

(7) Maritime Labour Certificate

Owners of specified categories of ships must hold a valid Maritime Labour Certificate ("Certificate") or Interim Maritime Labour Certificate ("Interim Certificate") (collectively "Certificates") before the ship can commence a voyage. Applications for the Certificate are to be made to the Director of Marine who will issue such Certificate if he is satisfied that (i) the ship has complied with the requirements under Part III; and (ii) the ship has been issued with a Declaration of Maritime Labour Compliance.

Unit No. 50-8-1, 8th Floor, Wisma UOA Damansara, 50 Jalan Dungun, Damansara Heights, 50490 Kuala Lumpur, Malaysia.
T: +(603) 2081 3999 F: +(603) 2094 3211 E: skrine@skrine.com W: www.skrine.com

The Certificate may be issued for a period not exceeding five years whereas an Interim Certificate may only be issued once for a period not exceeding five months. The Certificates must be displayed in a conspicuous part of the ship, be available for inspection and be produced upon request of interested parties such as the Director of Marine, the seafarer or his representatives.

In the event of any breach of the provisions of Part III or the conditions of the Certificates, the Director of Marine may suspend the Certificates and direct the owner to take steps to remedy the breach. Failure to remedy the breach may result in a revocation of the Certificates, after which the Owner must surrender the Certificates within 14 days of revocation or risk a fine not exceeding RM25,000 on conviction.

(8) Private Employment Agencies

Private employment agencies carrying on the business of supplying seafarers to work on any ship must hold a valid licence issued by the Director of Marine, failing which they will be liable to a fine not exceeding RM200,000 on conviction.

(9) Treatment of Stowaways

The International Convention for the Safety of Life at Sea ("SOLAS 1974") is the leading international shipping convention pertaining to safety of life at sea. The new section 127 of the MSO 1952 introduces mandatory procedures in line with SOLAS 1974 for the owner and master of a ship to comply with when dealing with stowaways, which include taking appropriate measures to ensure the security, general health, welfare and safety of the stowaway until disembarkation.

COMMENTS

While some of the standards under the MLC 2006 were already part of Malaysian law, the recent amendments to the MSO 1952 signal Malaysia's continued commitment to increase harmonisation of her shipping laws with that of the global shipping community. This augurs well for Malaysia in her quest to become a leading maritime nation. What is imperative now is for the Malaysian authorities to ensure proper enforcement of these standards, to avoid making *"a scarecrow of the law"*.

Owners, masters and seafarers should apprise themselves of the various obligations imposed by the amendments and take the appropriate measures to avoid contravention of the MSO 1952.

Life may have just got harder for the likes of Captain Jack Sparrow.

TRISHELEA SANDOSAM (trishelea.sandosam@skrine.com)

Trishelea is a Senior Associate in the Dispute Resolution Division of SKRINE. Her practice areas include shipping law and employment law.

Government introduces block exemption to Cartels Bill for specified international liner shipping activities

July 10, 2017

Contacts Partners Anne Callinan , James Craig

Competition law (inc Cartel Bill) (/resources/competition-law-inc-cartel-bill)

Could the Cartels Bill finally be enacted soon?

The Government is amending the Commerce (Cartels and Other Matters) Amendment Bill (Cartels Bill) to introduce an exception for certain international liner shipping activities.

Currently, the restrictive trade practices provisions of the Commerce Act do not apply to international shipping. The Cartels Bill proposed to repeal this, meaning that international shipping would be subject to the Commerce Act.

That changed on Thursday, 6 July 2017, when Commerce and Consumer Affairs Minister Jacqui Dean tabled a supplementary order paper (**SOP**) that amends the Cartels Bill by introducing a targeted block exemption for specified international liner shipping activities.

The specified activities are:

a. the co-ordination of schedules and the determination of port calls;
b. the exchange, sale, hire, or lease (including the sublease) of space on a ship;
c. the pooling of ships to operate a network;
d. the sharing or exchanging of equipment such as containers; and
e. capacity adjustments in response to fluctuations in supply and demand for international liner shipping services.

The Ministry of Business, Innovation and Employment (**MBIE**) issued a Regulatory Impact Statement on regulation of competition in international shipping in November 2016 (which has just been made public), so the international shipping exemption has clearly been on the Government's mind for some time. That Regulatory Impact Statement considered five options for competition regulation in the international shipping industry. Interestingly, the targeted block exemption put forward in the SOP was the Ministry's second choice. MBIE preferred the approach originally taken by the Cartels Bill - that is, removing the international shipping exemption. MBIE's view was that the collaborative activities exception introduced by the Bill would be sufficiently flexible to allow the shipping industry to collaborate efficiently. This view was supported by Treasury and the Commerce Commission. The Ministry of Foreign Affairs and Trade, on the other hand, preferred the targeted block exemption option.

The Minister for Commerce and Consumer Affairs opted for the targeted block exemption option, balancing the compliance costs of imposing the full Commerce Act regime on international shipping companies with the detriments of potential anticompetitive activity in the international shipping industry. This followed concerns raised by New Zealand importers and exporters that increased competition oversight of international shipping would have a detrimental impact on the international shipping options available to them.

What about the rest of the Cartels Bill?

Readers of our previous FYIs will be aware that there has been considerable delay to the passage of the Cartels Bill. Apart from shipping, that Bill also proposes to widen the automatic breaches of the Commerce Act in s30 to include market allocation and output restriction to the existing price fixing prohibition, and also to introduce a collaborative activities exception to replace the existing joint venture exception to price fixing.

The release of this new SOP indicates that we may finally see some movement shortly on the enactment of the Cartels Bill. The Bill is currently awaiting hearing before the Committee of the Whole House, where this SOP will be voted on by Members of Parliament. Following this, the Bill will progress to its third and final reading. MBIE has indicated that it expects to see the Bill become law in 2017.

The tabling of the SOP follows the recent announcement on 27 June 2017 that the Government is proposing further reform of the Commerce Act to grant the Commerce Commission the power to undertake market studies, and to improve the efficacy of mechanisms for enforcing the Commerce Act. Our summary of those proposals can be found **here (https://www.simpsongrierson.com/articles/2017/government-proposes-reform-to-the-commerce-act).** Those reforms are separate to this SOP and the Cartels Bill.

Further information, including the text of the Cabinet paper and Regulatory Impact Statement, can be found **here (http://www.mbie.govt.nz/info-services/business/competition-policy/cartel-criminalisation/block-exemption-for-specified-international-liner-shipping-activities).**

Contributors **johanna.mcdavitt@simpsongrierson.com (mailto:johanna.mcdavitt@simpsongrierson.com)**

SyCipLaw Tax Bulletin:

BIR Prescribes New Procedure for Claiming Tax Treaty Benefits for Dividend, Interest, and Royalty Income

On March 28, 2017, the Commissioner of Internal Revenue ("**CIR**") issued Revenue Memorandum Order No. 8-2017 dated October 24, 2016 ("**RMO 8-2017**"), which takes effect 90 days after signing.

RMO 8-2017 amends Revenue Memorandum Order No. 72-2010 ("**RMO 72-2010**") by providing for new procedures in claiming preferential tax treaty benefits on dividend, interest, and royalty income of nonresidents, following a system of self-assessment and automatic withholding of taxes subject to post-reporting validation, in lieu of obtaining a tax treaty relief application ("**TTRA**") ruling under RMO 72-2010. RMO 72-2010 continues to apply to income other than dividends, interest, and royalties, *i.e.*, the concerned nonresidents are still required to obtain TTRA rulings. The reduced tax rate of 15% applied to intercorporate dividends paid to nonresident foreign corporations under the tax-sparing provision of the National Internal Revenue of 1997, as amended (the "**Tax Code**") will be covered by a separate issuance.

In order to claim tax treaty relief under RMO 8-2017, the beneficial owner of the income must submit a duly accomplished Certificate of Residence for Tax Treaty Relief ("**CORTT**") Form to the withholding agent/income payor before the income is paid or credited. The CORTT Form serves as the proof of residency of the nonresident. The income recipient may instead use the prescribed certificate of residency of the country of residence ("**prescribed certificate of residency**"), but he must still accomplish the CORTT Form, except for Part I(D) (*Certification of Competent Authority or Authorized Tax Office of Country of Residence*). In this case, the income recipient must attach the prescribed certificate of residency to the CORTT Form submitted to the withholding agent/income payor.

The withholding agent or income payor can withhold at a reduced rate or exempt the nonresident based on the duly accomplished CORTT Form submitted to it. It must timely file the withholding tax returns (BIR Forms 1601-F and 1604-CF). It must also submit an original of the CORTT Form (together with the prescribed certificate of residency, as applicable) to the International Tax Affairs Division ("**ITAD**") of the Bureau of Internal Revenue ("**BIR**") and to Revenue District Office ("**RDO**") No. 39 within 30 days after payment of the withholding taxes due on the nonresident's dividend, interest or royalty income based on the applicable tax treaty. Failure to submit a CORTT Form to the withholding agent/ income payor would mean that the nonresident is not claiming any tax treaty relief and, therefore, such income will be

(Continued on page 2)

FOR MORE INFORMATION
Please contact your account partner
or the authors of this Client Alert:
Carina C. Laforteza cclaforteza@syciplaw.com
Maria Viola B. Vista-Villaroman mvbvista@syciplaw.com

MAKATI OFFICE
SyCipLaw Center, 105 Paseo de Roxas
Makati City, Metro Manila
Philippines 1226
Phone +632 982-3500, 982-3600, 982-3700
Fax +632 817-3896, 817-3567
Email sshg@syciplaw.com

(Continued from page 1)

subject to the normal tax rate under the Tax Code.

For dividend income purposes, the CORTT Form shall be valid for two years from the date of issuance, unless a prescribed certificate of residency is used, in which case the date of validity of the prescribed certificate of residency will prevail. For interest and royalty income purposes, the CORTT Form shall be valid per contract. The withholding agent must submit an updated Part II of the CORTT Form within 30 days after payment of the withholding taxes in the following cases: **(i)** if the CORTT Form filed with the ITAD and RDO No. 39 is used for another dividend payment within its prescribed period of validity; and **(ii)** in case of staggered payment of interest and royalty income.

The nonresident and/or the withholding agent/income payor is noncompliant and ineligible to avail of preferential treaty rates or tax exemption based on any of the following reasons: **(i)** failure to meet the requirements of the provision of the tax treaty being invoked; **(ii)** non-filing of BIR Form 1601-F or 1604-CF and non-payment of withholding taxes due as required by the Tax Code; **(iii)** discrepancy between the information contained in the CORTT Form and the information on BIR Form 1601-F; and **(iv)** failure to supply accurate and complete information in the CORTT Form and BIR Forms 1601-F and 1604-CF. Noncompliance shall be a ground for the denial of the use of preferential treaty rates and the disallowance of the pertinent expense/s of the withholding agent.

Nonresidents who already filed TTRAs on dividend, interest and royalty income prior to the effectivity of RMO 8-2017 are allowed to use the tax treaty rates invoked based on the applicable tax treaty, subject to compliance check.

Compliance check and post-reporting validation on withholding tax obligations and confirmation of appropriateness of availment of treaty benefits shall be part of the BIR's regular audit investigations conducted by the RDO where the domestic withholding agent is registered.

About SyCip Salazar Hernandez & Gatmaitan

Founded in 1945, SyCip Salazar Hernandez & Gatmaitan is one of the most established and largest law firms in the Philippines. Although its work centers on business activity, the firm has offered a broad and integrated range of legal services that cover such areas as family relations, constitutional issues, and other matters of law unrelated to commerce.

FOR MORE INFORMATION
Please contact your account partner
or the authors of this Client Alert:
Carina C. Laforteza cclaforteza@syciplaw.com
Maria Viola B. Vista-Villaroman mvbvista@syciplaw.com

MAKATI OFFICE
SyCipLaw Center, 105 Paseo de Roxas
Makati City, Metro Manila
Philippines 1226
Phone +632 982-3500, 982-3600, 982-3700
Fax +632 817-3896, 817-3567
Email sshg@syciplaw.com

Three-tier Progressive Tax Structure is Introduced to Replace the Fixed Estate and Gift Tax Rate

06/26/2017

Josephine Peng/Derrick Yang

Amendments to the "Estate and Gift Tax Act" were passed by the Legislative Yuan on 25 April 2017 and promulgated by the President on May 10 of the same year. A three-tier progressive tax structure has been adopted to replace the original 10% flat rate (i.e. judging by the net value of the estate/gift and the applicable tax bracket, a 10%, 15% or 20% tax rate will apply). Article 58-2 of the "Estate and Gift Tax Act" further provides that as the tax revenues from these amendments will be appropriated into the special fund set up under the "Long-term Care Services Act" to cover long-term care expenditures, the "Act Governing the Allocation of Governing Revenues and Expenditures" does not apply to such revenues.

Please find the amended tax brackets and rates in the table summarized below:

1. Estate Tax Brackets and Rates

	Net value of the Estate (Total value of the Estate less deductibles and exemptions)	Applicable Rate
Bracket I	Under NT$50 million	10%
Bracket II	Over NT$50 million and under NT$100 million	NT$5 million, plus 15% for the part of the estate over NT$50 million
Bracket III	Over NT$100 million	NT$12.5 million, plus 20% for the part of the estate over NT$100 million

2. Gift Tax Brackets and Rates

	Net value of the Gift (Total value of the Gift less deductibles and exemptions of the year)	Applicable Rate
Bracket I	Under NT$25 million	10%
Bracket II	Over NT$25 million and under NT$50 million	NT$2.5 million, plus 15% for the part of the gift over NT$25 million
Bracket III	Over NT$50 million	NT$6.25 million, plus 15% for the part of the gift over NT$50 million

www.leeandli.com

BAKER BOTTS

Ideas

EPA Finalizes TSCA Framework Rules

05 July 2017

Updates

On June 22, 2017, the U.S. Environmental Protection Agency (EPA) fulfilled one of its key statutory obligations under the 2016 federal Toxic Substances Control Act (TSCA) reform law by issuing three final TSCA "framework" rules. These new rules consist of:

1. A TSCA Inventory "reset" rule;
2. A "prioritization" rule identifying EPA's criteria and procedures for designating existing chemical substances as either "high-priority" or "low-priority" for evaluation against TSCA's "unreasonable risk" standard; and
3. A rule establishing the Agency's formal risk evaluation process for assessing high-priority chemical substances.

To support its ongoing TSCA implementation efforts, EPA also issued new non-binding regulatory guidance for conducting chemical risk evaluations that chemical manufacturers may use to assess existing chemicals. Finally, the Agency published a set of initial "scoping documents" for the first group of ten (10) existing chemicals already undergoing EPA risk evaluation (including, for example, asbestos, trichloroethylene, perchloroethylene and 1,4-dioxane); EPA further reported that it plans to publish for public comment draft "formulation documents" for these ten chemicals late this year. Brief summaries of EPA's final rules are provided below.

TSCA Inventory Reset Rule. This rule is intended to allow EPA to update the current TSCA Inventory by designating the more than 85,000 chemicals currently listed on the Inventory as either "active" or "inactive" in the domestic U.S. market.

- Under the final rule, EPA is requiring companies to file electronic notifications providing the specific identities and certain related information for chemicals that they manufactured and/or imported in non-exempt commercial quantities in the U.S. during the ten-year time period from June 21, 2006 through June 21, 2016. Chemical processors are not affirmatively required to file such notifications under the rule, but may do so on a voluntary basis. All chemicals covered by these notifications will be designated as "active" substances on the Inventory.
- Substances for which EPA receives no such notifications will be deemed "inactive." Any party wishing to manufacture or process an "inactive" chemical will be required to file a prospective notification with EPA at least 90 days prior to commencing manufacture/processing.
- Affected companies will have 180 days from the date of final publication of EPA's rule to submit the required notifications, using a standardized electronic form at the Agency's Central Data Exchange (CDX). However, companies potentially may be able

to take advantage of certain reporting exemptions and/or rely on CDX notifications made by other parties in lieu of submitting their own forms, so careful review of the rule's specific provisions is recommended.

Prioritization Rule. EPA's new prioritization rule establishes criteria and procedures for prioritizing which chemical substances are subject to formal TSCA risk evaluation.

- Under the revised TSCA law, any chemical designated as "high-priority" must undergo risk evaluation, while chemicals designated as "low-priority" typically would not. Consistent with this distinction, EPA's rule calls for the Agency to analyze the existing available information for particular chemicals, starting with those substances that have already been identified in EPA's 2014 Update to its TSCA Work Plan.
- Once EPA selects a chemical for prioritization review, the Agency would formally initiate the prioritization process by publishing a notice in the Federal Register, and then it would have between nine (9) and twelve (12) months to conclude its analysis, ending with a formal determination designating the chemical as either high- or low-priority.
- As part of this process interested parties would be afforded two separate chances to submit public comments: (1) in response to the initial Federal Register notice initiating the prioritization review; and (2) in response to EPA's proposed designation of the chemical as either high- or low-priority.
- Each chemical formally designated as "high-priority" would then be immediately subject to a formal EPA risk evaluation process, employing the technical steps and considerations outlined in the rule described below.

Risk Evaluation Rule. EPA's third rule establishes a risk evaluation process to determine whether high-priority chemical substances pose an unreasonable risk of injury to health or the environment.

- The risk evaluation process specified under the rule includes several key components, consisting of (1) an initial scoping step, in which EPA will identify the hazards, exposures, conditions of use and potentially exposed or susceptible subpopulations the Administrator expects to consider, (2) a hazard assessment, (3) an exposure assessment, (4) a risk characterization, and (5) a final risk determination as to whether the chemical substance, under the conditions of use, presents an unreasonable risk.
- In the final rule EPA stated that when evaluating the "conditions of use" for a particular chemical it will consider - as required by TSCA's statutory definition of this term, the "circumstances … under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used or disposed of." Nevertheless, EPA clarified that its risk evaluations may not necessarily consider all potential uses such as, for example, those that are deemed to involve "*de minimis*" risks. Rather, EPA said it would ensure that its risk evaluations consider all conditions of use posing the greatest concern or potential for risk. This potential limitation on the scope of EPA's analysis has already come under criticism from some nongovernmental organizations, and could be the subject of potential challenges to the final rule.

Related Professionals

J. Barton Seitz

Partner

Emergency Information Accessibility Rules for Second-Screen Devices – Compliance Deadline

07.10.17

By Maria T. Browne and Bradley W. Guyton

Today, July 10, 2017, is the compliance deadline for the FCC's rules regarding video description of emergency information on "second screens." Multichannel video programming distributors (MVPDs) are now required to pass through audible emergency information via the secondary audio stream on any application or plug-in that the MVPD provides for consumers to view the MVPD's linear programming on "second screen devices" on the MVPD's own network.

Under the FCC's rules, "second screen devices" are smartphones, tablets, laptops and similar devices. The audible emergency information at issue includes aural descriptions of emergency information that is presented visually during non-newscast programming, such as printed crawls, maps or other graphic displays.

The relevant rules do not apply to emergency information delivered on non-linear programming, such as video-on-demand, nor to over-the-top services whereby customers access MVPD programming over the Internet, such as TV Everywhere. The rules also do not yet extend to description of non-emergency video programming, an issue that is the subject of a pending rulemaking proceeding.

Please see our prior advisory for further details on the new requirements. www.dwt.com

Changing Cybersecurity Threats in the Context of the Internet of Things: Don't Blink or You'll Miss It

10 July 2017

In this hoganlovells.com interview, Washington, D.C.-based Hogan Lovells senior associate Paul Otto talks about security issues created by the exponential growth of the Internet of Things (IoT).

Can you start by giving us an overview of cybersecurity threats in the context of the IoT?

Otto: To start, it's helpful to understand the broader landscape and the threats involved in the IoT space. First, the number of connected devices has been proliferating at an extraordinary pace and is expected to eclipse the total U.S. population this year. That growth is explosive and exponential.

Consequently, there has been a corresponding uptick in the number of IoT-focused attacks. The number of vulnerabilities affecting software and hardware has risen at a similar speed. All of that combines to create a dynamic, difficult, and evolving landscape for cyber threats.

It is important for organizations' risk management and incident response processes to include consideration of the threats, actors, and motivations, as well as the nature of cyberattacks that may occur for internet-connected devices.

Are there any patterns developing in terms those responsible for threats?

Otto: There has been a range of attackers and threat actors, motivated by a variety of rationales. They have sought to compromise devices, to repurpose them for their own gain, or any number of other motivations. They may be targeting the confidentiality or integrity of data or the device or the availability of the product or service. Those attacks have begun to proliferate in the IoT space.

In addition, over the last year there has been an uptick in ransomware attacks, which are typically financially motivated and target data by locking it away. Those attacks may have a significant impact on IoT as numerous devices and corresponding services are taken down.

Against that backdrop and based on numerous industry reports, it remains the case that external actors are the primary threat and the source of the majority of attacks. This is an important distinction, because IoT-connected devices less frequently have the full benefit of enterprise network protection, as would an organization's servers and systems.

And what about the threats themselves? Any general or industry-specific patterns?

Otto: The U.S. Government Accountability Office (GAO) recently outlined a number of types of cyberattacks that could affect IoT devices, and it's important to understand the types of attacks that may occur.

Typically, attackers begin with the controlling software — like a hack against software within devices or the app that that is the interface — and the resulting damage impacts functionality or can take the device offline completely.

IoT devices also are exposed to other types of attack, with potentially more devastating results. One common attack is denial of service, which seeks to compromise integrity of IoT devices to knock systems or services offline. That could compromise thousands — or even millions — of devices.

As for specific sectors, a recent development is a significant increase in the number of attacks focused on medical devices. It could be security researchers or more malicious third parties seeking to cause the device to cease functionality or cause the device to function differently. Of course in the case of a medical device, that may create a risk to patient safety. A frequent example we see is third parties purchasing devices on the secondhand market then seeking to identify vulnerabilities. They may inform a company in advance — then demonstrate the vulnerability. It takes time to walk through the patch-up process, meanwhile the researcher may be seeking to publish or profit from the results.

Does anything else complicate matters? How are manufacturers seeking to counter these attacks?

Otto: There are commonalities to these vulnerabilities and attacks in the IoT space. The sheer volume of devices and apps, achieved by the falling cost of adding connectivity, creates its own problems.

Conversely, devices are increasingly designed to minimize power consumption, which may be in tension with more advanced security protection. And the ability to patch vulnerabilities swiftly may become more difficult with the proliferation of these devices.

The shorter timescale of software development typically, with support provided by major vendors, even for some of the most complex software is in tension with a potentially much long deployment lifespan for devices.

Finally, the connection with and use of cloud infrastructure creates a much larger space for these attackers to operate in. Everyone involved in the IoT is well advised to consider secure cloud capabilities as much as secure device capabilities.

About Paul Otto

Paul Otto is a senior associate at Hogan Lovells who understands the regulatory environment surrounding cybersecurity risk management and incident response. Leveraging his technical background and capabilities in computer science and engineering, he brings insight to clients as a compliance counselor who understands hardware, software, and technological innovation.

Contacts

Paul Otto

Senior
Associate
Washington,
D.C.

HOET PELAEZ CASTILLO & DUQUE

IP News

March 01, 2017

Increase in Tax Unit

The Venezuelan Government has published an increase in the official Tax Unit effective today. The Tax Unit is adjusted annually.

The new official fees for Intelectual Property Rights, which are calculated based on the Tax Unit, are the following:

Services	Tax Units	New Official Fees in US$
Granting Fees for Trademarks, Patents, Utility Models and Designs	50 + 15	1,950.00
Renewals for Trademark, Patents, Utility Models and Industrial Designs	100	3,000.00
Mergers and Assignments for Trademarks and Patents, Utility Models and Industrial Designs	100	3,000.00
Changes of name and changes of domicile against Trademarks, Patents, , Utility Models and Industrial Designs	20	600.00
Licenses for Trademarks, Patents, Utility Models and Industrial Designs	150	4,500.00
Patent Annuities	1st Annuity (100) 20th Annuity (2000)	From 3,000.00 to 60,000.00

IMPORTANT NOTICE: Fees in US Dollars are calculated at the official currency exchange rate of Bs. 10,00 per US$ 1.00 as established by the Venezuelan Government

HPCD IP Team

Hoet Pelaez Castillo & Duque – Intellectual Property
Av. Eugenio Mendoza, Edif. IASA, Piso 3, La Castellana, Caracas 1060, Venezuela
Email: InfoIp@hpcd.com – www.hpcd.com